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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT D. LANDIS,

Defendant and Appellant.

E037367, E039047

(Super.Ct.No. RIC290995)

OPINION

APPEAL from the Superior Court of Riverside County. James A. Edwards, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

Chris Truax, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Barry Carlton, Supervising

Deputy Attorney General, and Bradley A. Weinreb, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant to be a sexually violent predator (SVP) (Welf. & Inst. Code, § 6600) and the trial court committed him to the Department of Mental Health for two years. Defendant appeals, contending the trial court erred by consolidating the trial of two consecutive petitions brought by the People to commit him as an SVP and for denying his motion to sever those petitions. We disagree and affirm the judgment, while directing the trial court to amend its order of commitment.

ISSUES AND DISCUSSION

In May, 1997, defendant was committed for two years to the Department of Mental Health under Welfare and Institutions Code section 6600. In 1999 and 2000, petitions for subsequent commitment were filed by the People and defendant's commitment was extended by his agreement until April 3, 2002. On March 13, 2002, the People filed a petition extending defendant's commitment for another two years. In June, the trial court found probable cause to support the petition and set a trial date of August 1, 2003, at defendant's request. Proceedings were continued on that date, but the record does not show who requested the continuance. On August 7, 2003, the trial court held a hearing on defendant's pending motion that a report be kept confidential. Defense counsel stated she was going to file a motion to have a second doctor appointed and might seek a writ from this court concerning the trial court's ruling on the confidentiality issue. Over the next five months, continuances were granted, but the record does not disclose who requested them. Certainly, the record does not note any objection by

defendant to them. On January 5, 2004, the trial court set a trial date of February 9, 2004 for the 2002 petition. Further continuances were granted until March 15, 2004. Again, the record shows no objection by defendant to any of this. On March 10, 2004, the People had filed a petition to extend defendant's commitment, as the period covered by the 2002 petition, for which trial had not yet taken place, was going to expire on April 3rd. On March 15, 2004, defense counsel announced that she was ready for trial on the 2002 petition, but both she and the prosecutor were not available, as they were about to start trials on other matters. The prosecutor asked for a continuance to March 30 for the trial of the 2002 petition, when most of the doctors who had evaluated defendant would be available to testify. For the first time, defense counsel objected, saying defendant's rights to due process and equal protection were being violated by the delay. She moved for a dismissal, which the trial court denied. On March 30, the prosecutor asked that the two petitions be consolidated for trial, as the same four doctors would be testifying as to both. Defense counsel moved to dismiss the 2002 petition, on the grounds that defendant's speedy trial rights had been denied, and the 2004 petition, on the basis that if the 2002 petition was dismissed, it should be also, as it was "dependent" on the former. Counsel also objected to trial on the 2002 petition being continued so that the People's motion to consolidate could be briefed and heard. The trial court overruled her objection and ordered a shortening of the time to brief and hear the motion and set trial on the 2002 petition for April 6th. On April 5, the trial court denied the prosecutor's motion to consolidate the two petitions. Although defense counsel was ready for trial on the 2002 petition, she was unavailable because she was beginning trial in another matter. Over

objection by defense counsel, the trial court continued the trial of the 2002 petition to after the probable cause hearing on the 2004 petition. After the trial court found probable cause supported the 2004 petition, the prosecutor renewed his motion to consolidate the petitions, which the trial court granted on May 7, after the period of confinement sought in the 2002 petition had expired. At the time, defense counsel was ready for trial on the 2002 petition, but unavailable. Before trial on both petitions began, defense counsel moved to sever them, but her motion was denied. The jury returned a finding that defendant was a sexually violent predator and the trial court's order committing him to the Department of Mental Health was for a two year period commencing the day the finding was made.

Defendant concedes that a trial court has the inherent power to consolidate petitions, but not where such consolidation will not delay the trial of the earlier petition and not prejudice a defendant's right to a fair trial. (*People v. Litmon* (2004) 123 Cal.App.4th 1156, 1177 (*Litmon*).) However, in asserting that the trial court erred in granting the prosecutor's second motion to consolidate, defendant fails to point to anything about the consolidation that, in fact, prejudiced him at trial. Certainly, by the time the petitions were consolidated, trial of the 2002 petition had already been delayed by continuations, some of which defendant requested, some of which he did not object to and some of which he did.

Defendant points out that Welfare and Institutions Code section 6601, subdivision (d) authorizes only two psychiatrists or psychologists to examine the defendant, rather

than the three that testified at this trial.¹ Contrary to defendant's assertion, however, that subdivision does not prohibit the People from offering the testimony of more than two experts at trial of a petition for subsequent commitment. Moreover, defendant fails to explain how his right to a fair trial is impinged by having more than two experts testify about his mental state.

Defendant also asserts that consolidation circumvents the intent of the statute that a defendant's mental status be reevaluated every two years. While we have no quarrel with his position that that intent was circumvented in this case, it was the result of a series of continuances, none of which were objected to by defense counsel until a little more than two weeks before the period covered by the 2002 petition was to expire. The trial court, the prosecutor and defense counsel throughout the proceedings spoke of the difficulties of bringing SVP matters to trial, most of them dealing with the writing of reports by and scheduling the testimony of the doctors. Their feelings were echoed in *Litmon, supra*, 123 Cal.App.4th at p.1171, wherein the appellate court noted, "[S]ome SVP trials languish at the end of the long queue of civil cases awaiting trial in our already overworked trial courts." Defendant's assertion aside, there is nothing in the record before us showing that the delay in bringing the 2002 petition to trial was the result of a deliberate effort by the prosecutor.

¹ In fact, Welfare and Institutions Code section 6604, subdivision (b) makes section 6601, which on its face applies only to the original petition, applicable to subsequent petitions.

In *Litmon*, the appellate court condemned the continuation of the trial of a petition, over the defendant's objection, when that continuation was "*solely to accommodate the consolidation of the earlier and later petitions.*" (*Id.* at p. 1176.) When the trial court here continued trial of the 2002 petition over the first objection voiced by defendant, it was not to accommodate the consolidation of the 2002 and 2004 petitions, which the trial court denied until the time covered by the 2002 petition had expired. By then, as the People correctly point out, the issue was moot, as the commitment time for the 2002 petition had already run out. By the time the consolidated petitions went to trial, the only issue was defendant's then *current* mental status, which was proper, and whether his commitment should be extended to April 3, 2006.

Defendant cites *Litmon* as authority for declaring that the trial court's denial of his motion to sever was in error. However, the trial court denied the motion on day number one of trial, the same day a prospective jury panel was summoned and the parties and the trial court conferred about motions and 402s. No continuance was granted. Therefore, contrary to defendant's contention, *Litmon* was not "on all fours" with this case at that point and is not authority for our declaring the denial of the severance motion to be erroneous. Moreover, defendant's suggested remedy, that we remand this case to the trial court, ordering it to schedule trial on the 2002 petition, would be an exercise in futility.

The parties agree that the trial court's order that defendant's commitment, which is properly dated December 30, 2004, could be improperly interpreted to mean that he should remain committed until December 30, 2006. Defendant asserts that his commitment expired March 10, 2006, two years from the date the 2004 petition was

filed. The People correctly assert that his commitment was for the period April 3, 2004 to April 3, 2006. (See Welfare and Institutions Code section 6604.1, subdivision (a).) We will direct the trial court to amend its commitment order to reflect this period.

DISPOSITION

The trial court is directed to amend its order, committing defendant to the Department of Mental Health, to state that the commitment period runs from April 3, 2004 to April 3, 2006. In all other respects, the judgment is affirmed.

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RAMIREZ

P.J.

We concur:

McKINSTER

J.

MILLER

J.